



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

November 12, 1999  
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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Communications Assistance for Law  
Enforcement Act

CC Docket No. 97-213

Dear Ms. Roman Salas:

Enclosed for filing please find an original and four copies of the Petition for Reconsideration and or Clarification of the Commission's Second Report and Order, filed by the Federal Bureau of Investigation in the matter pending before the Commission as captioned above.

Sincerely,

*James G. Lovelace*  
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cc: Public Safety and Private Telecommunications Bureau  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 205545

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PETITION FOR RECONSIDERATION  
AND/OR CLARIFICATION

The FBI and Department of Justice respectfully request the Commission to clarify and/or reconsider FCC 99-229, the Second Report and Order ("Order") issued in the above-captioned proceeding, as further explained herein.

The FBI and Department of Justice agree with the Commission's conclusion that resellers are telecommunications carriers under the Communications Assistance for Law Enforcement Act (CALEA). Second Report and Order, ¶ 24. As the Commission observed: "resellers, as telecommunications carriers under the terms of section 102, are generally subject to CALEA." (47 U.S.C. §1001 (8)(A)). Second Report and Order, ¶ 24. The FBI and the Department of Justice request clarification, however, of the Commission's further statement that "resellers' responsibility under CALEA should be limited to their own facilities" and that "[r]esellers will therefore not be held responsible for the CALEA compliance responsibilities of the carrier whose services they are reselling with respect to the latter's underlying facilities." Ibid.

As we understand it, the Commission's qualification that resellers are not responsible for the compliance obligations of the underlying carrier would apply only in cases where the underlying carrier is itself a "telecommunications carrier" for purposes of CALEA, and hence the reseller's assistance capability responsibilities would be duplicative of those of the underlying carrier. The Commission's Order presupposes that the underlying carrier, like the reseller, is "engaged in the

transmission or switching of wire or electronic communications as a common carrier for hire" under section 102(8)(A), and thus either the reseller or the underlying carrier will have the responsibility for compliance with CALEA. The Department and the FBI request clarification of the Commission's Order to ensure that in the rare case where the underlying carrier claims not to be a telecommunications carrier subject to CALEA, law enforcement is not effectively disabled from enforcing CALEA's assistance capability obligations altogether.

For example, law enforcement may encounter situations where a carrier who ordinarily provides telecommunications services on a "non-common carrier" or "private" basis offers service to the public through a reseller. See, e.g., Public Serv. Co. of Okla., 3 FCC Red 2327 (1988) (authorization to lease excess capacity on fibre optic and microwave system as private, non-common carrier); World Comm. v. FCC, 735 F. 2d 1465 (D.C.Cir. 1984) (sale of domestic satellite transponders deemed non-common carrier activity); Pan American Corp., 101 FCC 2d 1318 (1985) (private international satellite carrier authorized for services that do not access the PSTN.) In this hypothetical case, the reseller may view its responsibilities as limited by virtue of the Commission's ruling that "resellers' responsibility under CALEA should be limited to their own facilities," while the underlying carrier may view itself as not being a "telecommunications carrier" under CALEA because it does not provide services directly to the public on a "common carrier" basis.

As stated above, the Department and the FBI view the Commission's ruling as placing the primary responsibility for CALEA compliance on the reseller, except where such responsibility would essentially duplicate the responsibilities of the underlying carrier. If the Commission regards the underlying carrier in this scenario as a "telecommunications carrier" by virtue of the services that it provides to the public through the reseller, then the Commission's order properly would be read

to excuse the reseller from responsibility for the carrier's equipment and facilities. But if the underlying carrier is regarded not to be a "telecommunications carrier," then the reseller should remain responsible in full for satisfying CALEA's assistance capability obligations with respect to its services.

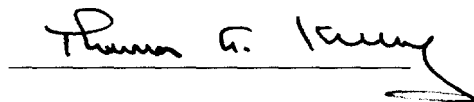
Clarification is requested to more fully set forth the respective obligations of the carrier and the reseller in this situation. To the extent that the Commission's holding could be understood to excuse both the underlying carrier and the reseller from CALEA obligations in this situation, the Department and the FBI request that the Commission revise the Order. The requirements of CALEA are applicable to any party "engaged in the transmission or switching of wire or electronic communications as a common carrier for hire," and the responsibility for ensuring compliance with CALEA must reside with at least one party involved in the provision of such services. The Commission therefore should clarify or amend the Order to make clear either that: (1) a carrier who sells telecommunications services to a reseller, who in turn sells the services to the public on a common carrier basis, is itself a "telecommunications carrier" under CALEA with respect to such services; or (2) that insofar as the underlying carrier is not a "telecommunications carrier," the reseller remains responsible in full for ensuring that the services it provides to the public, and the equipment and facilities involved in providing that service, are CALEA-compliant.

DATE: November 12, 1999

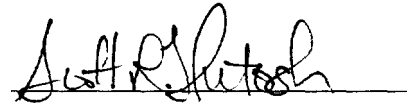
Respectfully submitted,

Louis J. Freeh, Director  
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Honorable Janet Reno  
Attorney General of the United States

A handwritten signature in cursive script, reading "Thomas A. Kelley", written over a horizontal line.

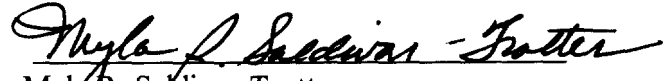
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### Certificate of Service

I, Myla R. Saldivar-Trotter, Federal Bureau of Investigation, hereby certify that a true copy of the foregoing **Petition for Reconsideration and/or Clarification** was served via hand delivery (indicated by \*) or by mail to the following parties:

  
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